



Appeal Decisions

Site visit made on 7 July 2022

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 August 2022

Appeal Ref: APP/E3715/C/21/3285704 (Appeal A) & 3285705 (Appeal B) The land at 69 Gilbert Avenue, Rugby, Warwickshire CV22 7BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Miss Jennifer Day (Appeal A) and Mr Michael Moore (Appeal B) against an enforcement notice issued by Rugby Borough Council.
 - The notice, numbered 2021/05, was issued on 30 September 2021.
 - The breach of planning control as alleged in the notice is the erection of a platform/Decking.
 - The requirements of the notice are to:
 - (i) Remove the platform/decking shown by blue edging on the plan or
 - (ii) Reduce the platform/decking 0.3m in height measured from ground level, this being the level of the highest part of the surface of the ground immediately adjacent to the platform/decking
 - (iii) Remove all material from the land arising from compliance with either (i) or (ii)
 - (iv) Reinstate the land to its previous condition
 - The period for compliance with the requirements is: two months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The enforcement notice is quashed.

Matter concerning the notice

2. Section 173 (3) of the Act states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. Section 174 (4) states that those purposes are – a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or b) remedying any injury to amenity which has been caused by the breach.
3. The requirements of the notice are set out in the alternative and give the appellants the option of removing the decking or reducing it in height. Requirement (ii) of the notice states 'Reduce the platform/decking 0.3m in height measured from ground level...'. However, I find the wording to be ambiguous. It is not clear whether the appellant would need to reduce the decking by 0.3m overall, or to reduce the decking to 0.3m below ground level. Given the potential penalties for non-compliance, it is essential that the appellants know what they have to do.

4. Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) permits the provision within the curtilage of the dwellinghouse any building or enclosure...subject to certain limitations, including (h) it would include the construction or provision of a verandah, balcony or raised platform.
5. Within the Technical Guidance: Permitted development rights for householders (2019), a raised platform is defined as any platform that has a height of more than 0.3 metres. Height is defined as the height measured from ground level but does not include any addition laid on top of the ground. Ground level is identified as; the surface of the ground immediately adjacent to the building in question.
6. The requirement to reduce the decking in height appears to have been included to enable the appellant to alter the decking so that it would not be a raised platform, for the purposes of the GPDO. I shall therefore consider whether it would be possible to correct the notice to require 'Reduce the platform/decking to no more than 0.3m in height measured from ground level...'.
7. Planning permission was granted to extend the house, reference R15/1732, dated 14 August 2015. It appears from the evidence and from my inspection of the site that the planning permission has been implemented. Drawing No CT15/885 shows side elevations, including a cross section of the building. The approved plans show a substantial height difference between ground level on the side elevation towards the rear of the property, as the land steps down.
8. However, that height differential was not evident during my site visit between the appeal property and No 71. The land appears to have been built up so that the it is fairly level to the side of the building. During my visit, the parties measured the distance from the adjacent ground to the top of the decking on the side elevation adjacent to No 71. The point adjacent to the decking measured around 20cm or 0.20m.
9. Within a document submitted by the appellants, they state that during a site visit with officers of the Council on 17 May 2021 'We pointed out the highest area of ground (under the kitchen window)'. In an email to the Council, dated 3 June 2021, the appellants repeat that 'the highest part of the surface of the ground is by the kitchen window', which is 'where some of the decking has already been re-laid'. There is no mention of the ground to the side of the building at this point, suggesting that ground levels to the side of the building were raised after the decking was installed.
10. I was able to see beneath the decking via a hatch in its side. I measured the distance from the ground to the underside of the decking, which both parties were able to see and agree was around 77cm. Although the ground beneath the decking was uneven, I saw that at least one and a half breeze blocks were exposed beneath the decking, as well as two courses of bricks. Each breeze block measured around 20cm in height and two courses of bricks measured around 14cm. I consider that the decking is located well above 0.3m above the ground beneath the kitchen window.
11. While the distance from the adjacent ground to the top of the decking on the side elevation adjacent to No 71 is now less than 0.3m, the works to raise the land do not appear to form part of the planning permission. Artificially raising the adjacent ground level so as to come within the 0.3m limitation would not,

in my view, result in compliance with the limitations of the GPDO. However, the GPDO does not grant retrospective planning permission.

12. Section 173(11) provides that (a) where an enforcement notice could have required buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then so far as the notice does not so require, planning permission shall be treated as having been granted by virtue of section 73A. Compliance with the notice would therefore result in planning permission under section 73A of the Act.
13. If I correct the notice to require the appellants to 'Reduce the platform/decking to no more than 0.3m in height measured from ground level...', since the ground level has now been raised, this would enable the appellants to retain the decking as constructed. This would cause injustice to the Council. Deleting requirement (ii) would cause injustice to the appellant, since it would remove the option to retain the decking in some form.

Conclusion

14. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
15. In these circumstances, the appeals on the grounds set out in section 174(2)(c) and (d) of the 1990 Act as amended do not fall to be considered.

M Savage

INSPECTOR